CALIFORNIA COASTAL COMMISSION
NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE AND TDD (415) 904- 5260
FAX (415) 904- 5400

W-12a

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Staff Report: Nov. 20, 2003
Hearing Date: Dec. 10, 2003

STAFF REPORT: REGULAR CALENDAR

APPLICATION FILE NO.: **2-03-003**

APPLICANTS: **Warren Weber**

PROJECT DESCRIPTION: (1) Removal of four culverts, a wooden platform and approximately 547 cubic yards of fill, (2) wetland restoration for the areas of proposed fill removal, (3) after-the-fact approval for mowing in the northern portion of the parcel to manage area for shorebirds, (4) removal of a 3 foot-high historic cattle fence, and (5) after-the-fact authorization of a 6.5-foot high wire mesh fence.

PROJECT LOCATION: 95 Olema-Bolinas Road, Bolinas, Marin County APN 195-290-24

LOCAL APPROVALS: Marin County Tidelands Permit

SUBSTANTIVE FILE DOCUMENTS: See Appendix A.

1.0 EXECUTIVE SUMMARY

The applicant proposes removal of approximately 547 cubic yards of fill from existing levees located along the southern and eastern boundary lines on APN 195-290-24, wetland restoration for the areas of proposed fill removal, removal of a 3 foot-high historic cattle fence, after-the-fact approval for mowing in the northern section of the parcel, after-the-fact authorization for construction of a deer fence, removal of culverts, and removal of a wooden platform on a 2.36-acre parcel at 95 Olema-Bolinas Road, Bolinas, Marin County.

Staff recommends approval of the proposed development with conditions regarding implementation of a restoration program to protect wetland resources and erosion control to protect the biological productivity and water quality of Bolinas Lagoon.

STAFF NOTE

The proposed project is located between Olema-Bolinas Road and Bolinas Lagoon in Marin County (Exhibit 1, Regional Map & Exhibit 2, Vicinity Map). Although Marin County has a

certified LCP, the project site is located on former tidelands and/or public trust lands over which the State retains a public trust interest. Therefore, pursuant to Section 30519 of the Coastal Act, the Commission maintains development review authority. The standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

2.0 STAFF RECOMMENDATION OF APPROVAL

The staff recommends that the Commission approve Coastal Development Permit No. 2-03-003 subject to the conditions in Sections 2.1 and 2.2 below.

Motion:

I move that the Commission approve Coastal Development Permit No. 2-03-003 subject to conditions pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

2.1 Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

2.2 Special Conditions

1. Wetland Restoration Program
   The permittee shall undertake development in accordance with the approved final wetland restoration plan titled "Supplement to Voluntary Restoration Plan for Star Route Farms, Revised June 2003." Any proposed changes to the approved final plans shall be submitted for the review and approval of the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Construction Period Erosion Control.

   A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, an erosion control plan to prevent the transport of sediment from the project site. The plan shall be designed to minimize the potential sources of sediment, control the amount of runoff, and retain sediment on-site during construction. The plan shall also limit application, generation, and migration of toxic substances and ensure the proper storage and disposal of toxic materials. The Erosion Control Plan shall include, at a minimum, the Best Management Practices specified below:

      1. Erosion & Sediment Source Control

      a. Establish fuel and vehicle maintenance staging areas located away from all drainage courses, and design these areas to control runoff.

      b. Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Only use water for any on-site cleaning. Do not use soap, solvents, degreasers, steam cleaning, or similar methods.

      c. All stockpiled materials or wastes prone to running off or subject to wind erosion must be covered.

      d. Use fiber rolls instead of silt fences to capture sediment where appropriate.

   B. The permittee shall be fully responsible for advising construction personnel of the requirements of the approved Erosion Control Plan.

   C. The permittee shall undertake development in accordance with the approved Erosion Control Plan. No proposed changes to the approved Erosion Control Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Condition Compliance

   WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy

prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

3.1 Project Location and Site Description

The project site is situated on the east side of Olema-Bolinas Road approximately one mile north of the town of Bolinas and consists of a 2.36-acre parcel (APN 195-290-24) (Exhibit 1, Regional Map, Exhibit 2, Vicinity Map, & Exhibit 3, Assessors Parcel Map). Tidal and transitional wetlands of Bolinas Lagoon border the project site on the east and a vacant parcel owned by the Marin County Open Space District abuts the site on the south. An 8.99-acre parcel (APN 195-290-13), also owned by the applicant, borders the project site (Parcel 24) on the north and west. The project site and the adjacent parcel (Parcel 13) create an "L" shaped piece of property totaling approximately 11 acres, which together constitute a portion of an approximately 100-acre organic farming operation known as Star Route Farms.[1]

Located on the eastern and southern sides of the project site adjacent to the tidal and transitional wetlands are drainage ditches, levees, a deer fence, and a historic cattle fence (Exhibit 4, Site Plan). The levee on the southern boundary measures approximately 225 feet in length, four feet in height, and two feet in width and continues for another 150 feet onto Parcel 13 for a total length of approximately 375 feet. The eastern levee of approximately the same height and width of the southern levee measures 562 feet in length. It continues onto the southern boundary of Parcel 13 for approximately 225 feet. A drainage ditch runs parallel to each of the levees. The drainage ditches are approximately three feet deep and vary in width from approximately two to eight feet, and, like the levees, continue onto Parcel 13 as well. A 6.5-foot-high wire grid fence with wooden posts four to six inches in diameter set every 60 feet, and metal deer fence stakes infilling the posts at 20-foot intervals, rests atop the levees demarcating the approximate southern and eastern boundaries of the project site. Immediately adjacent to the levees and the deer fence is a three-foot-high historic cattle fence. At the southeast corner of the parcel sits a six-foot by six-foot wooden platform, approximately four feet above ground. Four rusted culverts lie below the platform.

The elevation increases slightly from Olema-Bolinas Road (east to west) over the entire 11 acres (project site and Parcel 13) with the project site portion receiving the most tidal influence. Although no official delineation has been carried out, Commission staff biologist, Dr. John Dixon, concurs with the determination of the applicant's consulting biologist that the project site is diked palustrine emergent wetland habitat. The primary source of water for these wetlands is rainfall and storm water runoff. Extreme tidal events coinciding with storm events serve to supplement the amount of water received at the project site.

No farming presently occurs on the project site; however, the applicant organically farms the southwestern portion of Parcel 13 with row crops in the summer and a cover crop in the fall. Typically, the cover crop is turned under in the spring unless it is too tall, in which case it is cut,

[1]The applicant also proposes development that requires a CDP on Parcel 13; however, Parcel 13 is located in Marin County's coastal development permitting jurisdiction. On January 28, 2003, the Marin County Board of Supervisors approved a CDP for the proposed development on Parcel 13; however, local approval of the CDP was subsequently appealed and is also before the Commission as Item 11a (Appeal number A-2-MAR-03-008).

composted, and reapplied. Salad greens, squash, or potatoes are sown and watered as needed. After the last harvest, a cover crop (clover, vetch, or other species) is sown in the fall whereupon it germinates with the first few rainfall events. The northern section of the property, part of Parcel 13, is left fallow and includes a corner of riparian vegetation associated with Pine Gulch Creek. Portions of the remaining acreage, including the project site, are periodically mowed and composted and cows are sometimes brought in to graze the cover crop in the spring.

3.2 Background

As stated above, the project site and Parcel 13 create an 11-acre piece of property that is part of a larger 100-acre organic farm owned by the applicant. The applicant purchased Parcel 13 and the project site in 1981 to add to the existing farm. As noted in the section above, the applicant cultivates a portion of Parcel 13 and mows the remaining portions of Parcel 13 and the project site.

At the time of purchase, small levees, drainage ditches, and an approximately three-foot-high historic livestock fence ran along the eastern and southern boundaries of the two parcels. Two ditches also ran in an east-west direction across the two parcels from Olema-Bolinas Road to Bolinas Lagoon effectively trisecting the parcels. The exact time the levees, ditches, and fence were constructed is unknown, but according to historic photographs and a technical analysis prepared by the applicant's consultant, the development predates any coastal development permitting requirements. Prior to the purchase of the parcels by the applicant, the historic use of the property included cattle grazing, hay production, and open space. According to correspondents received by the Commission, the site has been used for agriculture since at least the 1870s (Exhibit 5, Letter from Pepper).

A report prepared by Prunuske Chatham, Inc. for the County of Marin concluded that the vegetative makeup of the parcels prior to the applicant's acquisition of them included approximately one acre of salt marsh in the southeast quadrant of the property that graded to seasonal freshwater wetland and gradually sloped to upland near the road. The levees on the southern and eastern boundaries that are the subject of this permit are included within this wetland area. Although Prunuske Chatham, Inc. was unable to determine an exact wetland upland boundary, the historic record indicates that perhaps as much as 50% or more of the area currently under cultivation (located on Parcel 13) was seasonal wetland. The plant community in this area would have been similar to that of the adjacent Marin County Open Space property to the south. Native plants would have included rushes, native blackberry, marsh beaked buttercup, and pacific cinquefoil mixed with non-native annual grasses such as Italian ryegrass and velvet grass. The remainder of the cultivated area would have been upland grassland dominated by non-native annual grasses, naturalized herbaceous weeds, and probably patches of non-native blackberry. Although a brief period of regular seasonal grazing in the mid-1970s probably favored taller growing grasses and fewer weedy species, the sporadic, low intensity grazing use before and after this period maintained a patchwork of grasses, forbs, and shrubs. The report further concluded that current management practices have reduced the amount of salt marsh, seasonal wetland and grassland vegetation (Prunuske Chatham, Inc. 2002).

In 1986, the applicant performed maintenance work on the existing drainage ditches using an excavator to remove accumulated sediment.[2] Without the benefit of an approved coastal development permit, the applicant placed the sediment on top of the adjacent levees within the wetland. In addition, the applicant constructed a wooden platform at the southeastern corner of the project site, as well as four culverts that would be used to convey water off the property from the eastern and southern ditches, both of which are located within the wetland. The applicant also placed tide gates on the culverts to control tidal influence over the property (the tide gates were subsequently removed). In 1995, without the benefit of an approved coastal development permit, the applicant installed a 6.5-foot-high wire mesh deer fence along the southern and eastern boundaries of parcel.

On August 27, 1996, Commission planning staff notified the applicant in writing that unpermitted development carried out on the property constituted a violation of the Coastal Act. In response to staff's letter, the applicant submitted a CDP application for the annual recontouring of historical ditches along west and south border of APN 195-290-24 and after-the-fact authorization to retain the deer fence; however, this application was never processed. Subsequently, it was determined that the application should include the removal of the unpermitted fill.

In June of 1999, Coastal Commission staff determined that the property on which the Coastal Act violation existed partly in the coastal permit jurisdiction of the Coastal Commission and partly within the coastal permit jurisdiction of Marin County. Specifically, Parcel 13 is located within the County's permit jurisdiction, and the project site (Parcel 24) is entirely within the Commission's permit jurisdiction boundary. Thus, it was concluded that coastal permits would be required from both the County and from the Coastal Commission for removal of the unpermitted fill.

On May 22, 2000, enforcement staff instructed the applicant in writing to first obtain a coastal permit from Marin County for the portion of the fill in the County's coastal development permit jurisdiction. In July 2000, the applicant submitted to the County a coastal permit application for the removal of unpermitted fill for the portion within the County's jurisdiction. Before the permit could be processed, the County required that soil profiles be taken to estimate the amount of fill to be removed from the existing berms. Soil profiles were subsequently taken on June 4, 2002, and it was established that 153 cubic yards of fill on the berms along the southern and eastern boundaries of the Parcel 13 and 547 cubic yards of fill on the project site in question would be removed for a total of 770 cubic yards.

On January 28, 2003, the County approved Coastal Development Permit 01-03, which approved the removal of approximately 153 cubic yards of fill as well as after-the-fact authorization for the unpermitted deer fence. This permit was subsequently appealed to the Coastal Commission on to February 28, 2003.

On February 4, 2003, the applicant submitted a Coastal Development Permit for the portion within the Coastal Commission's jurisdiction, which included the removal of unpermitted fill, and a request for after-the-fact authorization for the deer fence. Subsequently, on a March 3,

[2] As discussed above, the drainage ditches existed prior to 1972. Maintenance performed by the applicant to retain the 1972 ditch configuration is exempt from review; however, modification of that configuration would constitute new development and would require a coastal development permit.

2003 site visit, Commission staff notified the applicant that the platform and culverts also constituted a violation of the Coastal Act. The applicant amended the CDP application on May 23, 2003, to include removal of the platform and culverts.

In addition, in 1998, the U.S. Army Corps of Engineers informed the applicant that there were alleged violations of the Clean Water Act on his property involving unauthorized fill of wetlands. A settlement agreement between the applicant and the Corps was signed on December 14, 1998. This agreement required, among other things, that the applicant remove the fill placed on the levees, restore and maintain the two interior trisecting ditches, and place all removed material in an upland location at least 100 feet from any stream channel.

3.3 Project Description

The applicant proposes to (1) remove approximately 547 cubic yards of wetland fill from existing levees located along the southern and eastern boundary lines of APN 195-290-24; (2) remove four rusted culverts and a wooden platform in the southeast corner of the wetland parcel and discontinue mowing within the southern portion of the parcel; and (3) carry out wetland restoration for the areas of proposed fill removal. In addition, the applicant is requesting after-the-fact authorization for mowing within the northern portion of the parcel and construction of a deer fence along the southern and eastern boundaries of the parcel (Exhibit 6, Proposed Development Plan).

The Grading, Restoration and Erosion Control Plan dated April 2003 depicts the fill removal area in plan view and the Partial Site Survey of Assessor of Parcel Numbers 195-290-13 & 195-290-24 dated May 2000 illustrates the levee cross-sections and their locations (Exhibit 7, Grading, Restoration and Erosion Control Plan and Exhibit 8, Partial Site Survey). The cross sections show the approximate amount of fill to be removed and the resulting elevations. The actual volume of fill to be removed from the project site would be determined in the field by site-specific soil observations at intervals along the levees during the removal project. The fill removal would be completed under the guidance and supervision of the applicant's wetland scientist, and the Corps would inspect the property to confirm that soil removal has been satisfactorily completed.

All fill removed from the property would be spread as a soil enhancement over approximately 20 acres of upland cropland located across the Olema-Bolinas Road north and west of the project site. All material would be placed at least 100 feet from any stream channel. This land is also owned by the applicant, and is not within the Commission's original jurisdiction.[3]

Fill removal would be undertaken at such time as there is no water in the existing ditches. Notwithstanding that the work would be accomplished during the dry season, and when there would be no water in the ditches, the applicant proposes to implement sediment and erosion control measures to prevent sediment from entering Bolinas Lagoon.

The proposed project would include replacement of an existing 3-foot tall historic cattle fence with a 6.5-foot tall deer fence (Exhibit 9, Photographs of Cattle Fence & Deer Fence). As noted above, the proposed deer fence was constructed in 1995 without the benefit of a coastal development permit. Prior to the proposed removal of fill from the berms, the applicant would

[3] The placement of the removed fill on the upland property was approved under the County Coastal Development Permit No. 01-03 which is now before the Commission as appeal A- 2-MAR-03-008.

remove both the deer fence and cattle fence. Once fill removal is completed, only the deer fence would be replaced. In addition, the remnants of the culvert, as well as the wooden platform, would be removed. Following fence, culvert, and wooden platform removal the area would be mowed close to the ground and then an excavator would be used to remove this side cast soil, placing it in two dump trucks. The trucks would transport the material to the upland parcels across Olema-Bolinas Road, where it would be spread at a shallow depth over a wide area as a soil amendment. The applicant estimates that the fill removal would occur over a two-week period.

Finished grading following fill removal would involve grading along the edges of the excavated area to tie into the existing gently sloping topography to facilitate wetland hydrology, soil, and vegetation development. Grading activities would be monitored by a grade checker to ensure that the surface of soils that have been covered by the fill would be exposed. The grade checker would be under the direction of the applicant's wetland scientist.

After fill removal and finished grading are completed, the perimeter deer fence would be installed approximately one-foot interior of the property line. The fence would be 6.5 feet high wire grid with two strands of top wire. Wooden posts four to six inches in diameter would be set every 60 feet, and metal deer fence stakes would infill the posts at 20-foot intervals. With removal of the soil material, the top of the fence would be several feet lower than it is presently.

The project area would be replanted in accordance with the Supplement to Voluntary Restoration Plan. In order to establish more rapid plant growth, the restoration area would be sprigged and/or seeded with salt grass, the dominant species found in adjacent wetland areas. Planting would occur after the side cast soil material is removed and planting bed prepared. Preparation of the planting bed would involve the use of a rototiller and hand tools. Salt grass sprigs approximately one inch in diameter would be planted at a rate of 500 sprigs per acre. If the site is seeded with salt grass, the rate would be 25 pounds per acre. No pre- or post-planting applications of fertilizer or herbicides would occur. The source of the salt grass sprigs would be the adjacent wetlands. Sprig collection would be accomplished so as not to destroy or significantly disrupt the donor site. A local commercial native plant vendors seed source would be used. Follow-up inspections would be made as necessary to ensure proper plant growth.

The applicant also proposes to abandon unauthorized mowing activities in the southern portion of the parcel, and requests after-the-fact authorization to continue mowing the northern portion of the parcel to manage the area specifically for shorebirds (Exhibit 10, Proposed Shorebird Management Plan). Mowing would be a carried out in the late spring and/or early fall when the soil is dry.

3.3.1 Wetland Resources

Coastal Act Section 30233 states in relevant part:

> *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

…

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

...

Although no official delineation has been carried out, a report titled the Supplement to Voluntary Restoration Plan for Star Route Farms dated June 2003 and submitted by the applicant, classifies the project site as diked palustrine emergent wetland habitat and describes the underlying soils as poorly drained clay loam soils with low permeability. These soils are the same type that occurs in the existing wetlands immediately adjacent to the project site. The report further states that hydric soils within the existing wetland pond and/or saturate during the rainy season for long to very long durations of time. The soils also become inundated and/or saturated during extreme tidal events. The primary source of water for these wetlands is rainfall and storm water runoff. Extreme tidal events coinciding with storm events serve to supplement the amount of water received at the project site. At present, the eastern and southern ditches drain to Bolinas Lagoon to the east through a ditch opening approximately 7 feet wide at the intersection of the eastern and southern levees. The four remnant corrugated metal culverts that are rusting apart are within this opening area with water flowing around and through these structures. No flap gates are present on the culverts. The opening allows for relatively unobstructed tidal flow onto the parcel. The opening also allows for relatively unobstructed drainage of standing waters resulting from storm water or in combination with tidal influence following coinciding extreme storm and high tide/wind events.

As noted in Section 3.2 (Project Background), in 1986, the applicant carried out the following development within the wetland without the benefit of coastal development permit: (1) deposited

approximately 547 cubic yards of sediment to existing levees on the southern and eastern boundaries of the project site; (2) constructed a wooden platform at the southeast corner of the site; and (3) installed four culverts under the platform. The additional 547 cubic yards of fill added to the existing levees resulted from maintenance activities the applicant carried out on the adjacent drainage ditches. The wooden platform, installed at the same time, served as a bridge to cross over the ditch where the southern and eastern ditches come together, as well as a place to sit; however, it has since fallen into a state of disrepair. The applicant installed the culverts to convey water from the ditches off the property. As noted above, the culverts have since disintegrated and only rusted remnants remain. In addition to the unpermitted fill, the applicant has been removing vegetation from the wetland by mowing the interior area of the project site adjacent to the drainage ditches.

Coastal Act Section 30233 limits the types of development allowed within a wetland as listed above and only where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The unpermitted development carried out by the applicant is not allowable under Section 30233. Therefore, the placement of 547 cubic yards of soil material, a wooden platform, and culverts is in conflict with Section 30233. However, the applicant proposes to remove the 547 cubic yards of soil, culverts, and platform, consistent with Section 30233.

Through the removal of the fill, the frequency of past inundation would be restored to the historic levee area prior to the placement of the fill. Lowering the levee to the elevation prior to 1972 would create a greater opportunity for overtopping and extreme high tide/wind events, but these events are infrequent. Nevertheless, given that the east and south ditch systems would continue to drain Parcel 13 and the project site through the south-east corner opening and would allow tidal waters to enter the site in a unobstructed manner along basically the same flow path, the frequency and duration of wetland hydrology conditions within the project site and Parcel 13 after removal of the fill should be similar to those that currently exist.

In addition to removing the fill, the applicant proposes wetland restoration activities in those areas. This constitutes an approximately 10-foot wide area approximately 200 feet long along the southern boundary and a 10-foot wide area approximately 750 feet long along the eastern edge of the parcel. The restoration plan includes the following components: (1) goals and objectives of the restoration program; (2) restoration program success criteria; (3) restoration program implementation; (4) restoration success monitoring plan; (5) management and maintenance plan during monitoring plan period; and (6) contingency measures if the restoration success criteria are not met by the end of the third year. To ensure that the restoration activities are carried out consistent with the restoration program, **Special Condition 1** requires the applicant to undertake development in accordance with the approved final wetland restoration plan. As conditioned, the restoration of the area of proposed fill removal would adequately restore the wetland habitat impacted by the unpermitted wetland fill.

Since the proposed development removes unpermitted wetland fill, and as conditioned would incorporate measures to adequately restore the impacted wetlands, the Commission finds that the proposed removal of the unpermitted fill, wooden platform and culverts, and wetland restoration, as conditioned, is consistent with Coastal Act Section 30233.

As part of the application, the applicant also proposes to abandon unauthorized mowing activities in the southern portion of the parcel, and requests after-the-fact authorization to continue mowing the northern portion of the parcel to manage the area specifically for shorebirds. Mowing would be a carried out in the late spring and/or early fall when the soil is dry.

The applicant's parcel provides a unique niche for shorebirds in Bolinas Lagoon. The Marin County Unit I LCP documents a historic use of this portion of the property by shorebirds. It states the following:

> *These lands [marshy pastures south of the Pine Gulch Creek Delta] have been identified by Page and Stenzel (1975) as important feeding and resting areas for shorebirds.*

The LCPs further states:

> *The eleven-acre Henry Wilkins property (Assessor Parcel Numbers 195-290-13 and 24) is the only remaining hightide roost for shorebirds and water fowl in Bolinas Lagoon that is protected from significant disturbance, and is the only habitat adjacent to the lagoon for snipe (Capella gallinago), with a population of about 100 individuals. In addition, it is one of the few locations around the lagoon where there is a transition from salt marsh to freshwater marsh habitats and thereby adds to the total diversity of habitat areas around the lagoon.*
> *[Emphasis added.]*

Grazing activities and unauthorized mowing have kept the vegetation low on this property, which as a result has favored shorebirds. The applicant proposes to continue mowing activities on the northern portion of the property to maintain the habitat for shorebirds. In support of his proposal, the applicant submitted a letter from Rick Stallcup, staff naturalist for the Point Reyes Bird Observatory and field biologist and science advisory board member for the Audubon Canyon Ranch in which Mr. Stallcup comments on the proposed mowing activities (Exhibit 11, Lecture from Stallcup). Mr. Stallcup comments that the hardy non-native plants in the northern portion of the property are deeply entrenched and that their removal and replacement with weaker natives would require constant perpetual care that would likely not succeed. He further states that:

> *Because, a current lack of grazing on the west side of Bolinas Lagoon and because extreme high tide a mandate Kent Island (formally a high tide sanctuary for thousands of shorebirds), your cultivated parcel [applicant's parcel] of open land (the pumpkin patch -- Parcel 13) enhanced by rain runoff has become a MAJOR high tide roost for leaders and waterfowl.*
> …
> *There are now few places for the myriad shorebirds that winter at Bolinas Lagoon to shelter during extreme high tide…*

He recommends mowing the parcel in the northern section to increase availability of "safe haven" for shorebirds during high tide situations. Commission staff biologist concurs that mowing would allow for the continued use of the parcel by shorebirds.

Under Coastal Act Section 30233 development within a wetland is allowed for restoration and resource dependent activities. As discussed above, the purpose of the mowing would be to manage and enhance the habitat for the continued use by shorebirds consistent with the historic uses of the property identified in the certified LCP. Therefore, the Commission finds the proposed mowing in the northern portion of the property consistent with the Coastal Act Section in wetlands 30233 limitations on allowable dredge activities and wetlands.

In addition to the placement of the platform, culverts, and 547 cubic yards of soil material in the wetland in 1986, the applicant erected a 6.5 foot-high deer fence, on top of the levees and adjacent to the existing historic cattle fence along the southern and eastern boundaries of the project site. As discussed in Section 3.3 (Project Description), the applicant proposes to replace the existing cattle fence with the deer fence.

The proposed deer fence is necessary to allow for continuing agricultural use of the property, which is clearly contemplated by the Marin County Unit I LCP. The approved development is located on agriculturally zoned land and agricultural activities have occurred on the property since the early 1900s, long before the passage of the Coastal Act and certification of the Marin County Unit I LCP. Grazing was the primary historic use of the site, which was supported by the historic cattle fence that still exists on the property. In the early 1980s the applicant changed the type of agricultural use from grazing to row cropping. With the change in agricultural use came different managerial challenges, including foraging deer. Deer are capable of jumping over the three-foot high cattle fence and will graze the row crops. As such, the cattle fence was not effective in keeping out the deer and thus, no longer sufficient to support the ongoing agricultural use of the property. At first the applicant managed the deer under a predator permit from the Department of Fish and Game (DFG); however, DFG stopped issuing predator permits in the early 1990s if applicants did not try nonlethal control methods first, which required the applicant to approach managing the deer differently.

The change in the type of agricultural use of the project site from grazing to organic farming requires the replacement of the existing cattle fence with a deer fence. Replacement of the cattle fence with a deer fence will reduce the wetland fill associated with the fence from approximately 60 square feet to 3 square feet. As such, the proposed development would result in a net decrease of wetland fill. Moreover, the proposed fill will not result in the establishment of a new use inconsistent with the allowable use provisions of Section 30233 of the Coastal Act because the purpose of the fill is to allow for a less extensive fence that would only continue to facilitate the pre-existing historic agricultural use of the site. Therefore, the Commission finds the proposed replacement of the cattle fence with a deer fence is consistent with wetland protection requirements of Coastal Act Section 30233.

3.3.2 Erosion and Polluted Runoff

Coastal Act Section 30230 states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Coastal Act Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed development is located adjacent to Bolinas Lagoon. Bolinas Lagoon is within the Gulf of the Farallones National Marine Sanctuary, one of four national marine sanctuaries in California and one of thirteen in the nation. The Sanctuary was designated in 1981 to protect and manage the 1,255 square miles encompassing the Gulf of the Farallones, Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Bay, Estero San Antonio, Estero de Americano, Duxbury Reef, and Bolinas Lagoon. The approximately 2.2-square-mile (1,400-acre) lagoon contains environmentally sensitive habitat, including wetland and mudflats. The lagoon provides an important haul-out and birthing site for harbor seals. In addition, benthic invertebrates and fish in the lagoon support a great diversity and abundance of wintering and migratory shorebirds, waterfowl, gulls, and other water-associated birds (Marin County LCP 1981). One of the water quality challenges Bolinas Lagoon faces today is increasing sedimentation. As a result of human activity since European colonization, Bolinas Lagoon has been filling in at an accelerated rate and the Lagoon is predicted to begin closing intermittently within the next 50 years. The result of these closures would be a disruption in the flow of water in the Lagoon, and the Lagoon's value as estuarine habitat would decline. Protecting the water quality of Bolinas Lagoon, which includes preventing increased sedimentation, is essential to preserving the Lagoon and the coastal resources it supports.

Section 30230 states that marine resources, especially those areas and species of special biological significance, shall be maintained and where possible enhanced. Section 30231 protects the biological productivity and the quality of coastal waters, and wetlands. During fill removal, soils would be exposed and subject to wind erosion and runoff. Furthermore, construction equipment associated with the development would be present on-site. Since the project site is immediately adjacent to the Lagoon, increased sediment load as well as debris or contaminants resulting from the removal of the culverts and platform and associated equipment could affect the water quality and potentially any organisms living in the Lagoon, inconsistent with Sections 30230 and 30231 of the Coastal Act.

To address potential water quality impacts related to the fill removal, the applicant proposes to carry out work (1) during the dry season, (2) when the adjacent drainage ditches are dry, and (3) in accordance with the submitted Grading, Restoration, and Erosion Control Plan dated April

2003. The grading and erosion control plan includes installing sterile (weed-free) straw on bare soil areas and using vegetable clippings, straw bales, silt fences, fiber rolls, or other suitable barrier material to prevent sediment from entering Bolinas Lagoon.

To further ensure that the proposed development would not introduce sediment or other contaminants into the Lagoon, the Commission finds that additional temporary erosion and runoff control best management practices (BMPs) are necessary, which include covering all stockpiled materials or wastes prone to running off or subject to wind erosion, establishing fuel and vehicle maintenance staging areas located away from all drainage courses, and maintaining and washing equipment and machinery in confined areas specifically designed to control runoff. Therefore, the Commission imposes **Special Condition 1** to require the applicant to submit a final erosion control plan, incorporating best management practices, to minimize the potential sources of sediment, control the amount of runoff, and retain sediment on-site during fill removal.

Thus, the Commission finds that the proposed development, as conditioned, would protect the water quality and biological resources of Bolinas Lagoon, consistent with Coastal Act Policies 30230 and 30231.

3.4 Public Access

Coastal Act Section 30210 states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreation opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resources areas from overuse.*

Coastal Act Section 30211 states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30212 states:

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
>
> > *(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
> >
> > *(2) Adequate access exists nearby, or,*
> >
> > *(3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
>
> *(b) For purposes of this section, "new development" does not include:*
>
> > *(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than l0 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(a) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access.

The project site, located at 95 Olema-Bolinas Road, which runs along east side Bolinas Lagoon, lies between Olema-Bolinas Road and Bolinas Lagoon. The applicant privately owns the project site and there are no recorded public access easements or offers to dedicate public access easements affecting the subject parcel. However, because a portion of the land is located on tidelands and filled former tidelands, a public trust easement may extend over some of the site. This easement guarantees the public's right to access the shoreline for the purposes of navigation, commerce, fishing and recreation. In addition, neither the applicant nor the Commission staff have conducted a study to determine whether the public may have a right to access the coast through any portion of the project site based on use. Thus, there is a potential that the public may have acquired a right by implied dedication to use the project site to access the coast and the sea.

However, the proposed development is located on private property on which there is no evidence of public trails; aerial photographs evidence farming of the site. Furthermore, immediately adjacent to the project site is a parcel owned by Marin County Open Space District that includes public trails. The proposed development involves the removal of unpermitted development, including a wooden platform, culverts, fill, wetland restoration, and a request for after-the-fact approval for an unpermitted fence. The removal of the fill, platforms and culverts, and wetland

restoration would not interfere with any public access rights which may exist on the site. Only the construction of a fence could potentially conflict with any public rights that may exist to access the shoreline and the sea. However, the likelihood of any such conflict is remote since the deer fence would replace, in the same alignment, a cattle fence that has existed on the property well before the passage of the Coastal Act and its predecessor statute. In this case, the Commission finds there is no evidence that the proposed fence conflicts with any public rights that may exist to access the shoreline and the sea because public access exists on the open-space parcel immediately adjacent to the project site, the proposed fence would not interfere with that public access, aerial photographs depict farming, not trails, and the replacement fences in the same alignment as a historic cattle fence that has existed on the property since well before the passage of the Coastal Act. Therefore, as conditioned, development would not interfere with any public trust easement to the extent that any exists. Therefore, the Commission finds that as conditioned the proposed project is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

3.5 Alleged Violation

Between 1986 and 1995, without benefit of a coastal permit, the applicant undertook development consisting of the: (1) placement of approximately 547 cubic yards of wetland fill; (2) installation of four culverts and a wooden platform; and (3) construction of a 6.5-foot deer fence in Bolinas, Marin County (Exhibit 4, Site Photographs). In February of 2003, the applicant applied for after-the-fact authorization of the above-mentioned development.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of Chapter 3 of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

3.6 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effects, which the activity may have on the environment.

The proposed project has been conditioned to be found consistent with the policies of the Coastal Act. The Commission finds that the removal of unpermitted development, including four culverts, a wooden platform, approximately 547 cubic yards of fill, removal of a historic cattle fence, placement of a deer fence, and restoration of wetland and shorebird habitat, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

EXHIBITS:

1. Regional map
2. Vicinity map
3. Assessors Parcel Map
4. Site Plan
5. Letter from Frank G. Pepper
6. Proposed Development Plan
7. Grading, Restoration, and Erosion Control Plan
8. Partial Site Survey
9. Photographs of Cattle Fence & Deer Fence
10. Proposed Shorebird Management Plan
11. Letter from Rich Stallcup, November 10 , 2003

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Prunuske Chatham, Inc., Habitat Investigation of a Portion of Star Route Farms, Bolinas for Marin County Community Development Agency. January 9, 2002.